

Supreme Court, U.S.
FILED

05-751 DEC 5 - 2005

No.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2005

CAPITAL CASE

WILLIAM VAN POYCK,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW
- CAPITAL CASE -

The questions presented in this CAPITAL CASE are:

1. CAN A STATE COURT EXTINGUISH A DEFENDANT'S STATUTORY RIGHT TO SEEK DNA TESTING THAT HAS A REASONABLE PROBABILITY OF MITIGATING THE SENTENCE IN A MANNER THAT IS INCONSISTENT WITH THE EIGHTH AND FOURTEENTH AMENDMENTS?

2. DOES A *PER SE* RULE THAT BARS INQUIRY INTO THE IDENTITY OF THE TRIGGERMAN SO LONG AS THE REQUISITE *ENMUND/TISON* THRESHOLD FOR DEATH ELIGIBILITY IS MET COMPORT WITH THE EIGHTH AND FOURTEENTH AMENDMENTS?

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LIST REQUIRED BY RULE 14.1(b) AND 29.6

Pursuant to this Court's Rule 14.1(b), the party who sought to have his sentence reviewed by the Florida Supreme Court is William Van Poyck. Pursuant to this Court's Rule 29.6, Petitioner certifies that he is an individual.

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Petitioner William Van Poyck ("Van Poyck"), a state prisoner under sentence of death for a conviction of felony murder, respectfully moves this Honorable Court to issue a writ of *certiorari* to review the decision of the Supreme Court of Florida, rendered May 19, 2005, affirming the denial of Van

Poyck's post-conviction proceeding challenging his death sentence, with rehearing denied on July 15, 2005. On October 5, 2005, this Court granted Van Poyck's Application for Extension of Time to File Petition for Writ of Certiorari to the Florida Supreme Court, extending the time to file this Petition to December 5, 2005.

OPINIONS BELOW

The Supreme Court of Florida's May 19, 2005 decision ("Decision") affirming the trial court's denial of Van Poyck's Motion for Post-Conviction Relief, and affirming the sentence of death, is reported at *Van Poyck v. State*, 908 So. 2d 326 (Fla. 2005), rehearing denied, 906 So. 2d 1061 (Fla. 2005), and appears in Petitioner's Appendix at A-1 through A-12. The Supreme Court of Florida's July 15, 2005 Order denying Van Poyck's timely motion for rehearing appears in Petitioner's Appendix at B-1. The reported decision of the Supreme Court of Florida affirming Van Poyck's convictions and sentences on direct appeal, *Van Poyck v. State*, 564 So. 2d 1066 (Fla. 1990), appears in Petitioner's Appendix at C-1 through C-9, while the reported 4-3 split decision of the Supreme Court of Florida affirming the trial court's denial of Van Poyck's post-conviction motion pursuant to Rule Fla. R. Cr. P. 3.850, *Van Poyck v. State*, 694 So. 2d 686 (Fla. 1997), appears in Petitioner's Appendix at D-1 through D-34. The state trial court's sentencing order appears in Petitioner's Appendix at E-1 through E-5.

STATEMENT OF THE BASIS FOR JURISDICTION

1. The decision of the Supreme Court of Florida sought to be reviewed was rendered on May 19, 2005. Petitioner's timely Motion for Rehearing (Petitioner's Appendix at L-1 through L-9) was denied on July 15, 2005.

2. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1257(a), and Rule 10(c), Rules of the